

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, <u>ex rel.</u> VEN-A-)
CARE OF THE FLORIDA KEYS, INC., by and)
through its principal officers and directors,)
ZACHARY T. BENTLEY and T. MARK JONES,) Civil Action
) No. 05-11084-MEL
Plaintiff,) (Consolidated with certain
v.) claims severed from No. 00-
) 10698-MEL)
DEY, INC.; EM PHARMA, INC.; EMD) FILED IN CAMERA AND
PHARMACEUTICALS, INC.; LIPHA, S.A.;) UNDER SEAL
MERCK-LIPHA, S.A.; and MERCK KGaA,)
)
Defendants.)

NOTICE OF UNITED STATES OF AMERICA OF ELECTION
TO INTERVENE IN PART AND TO DECLINE TO INTERVENE IN PART

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4), the United States notifies the Court of its decision to intervene with respect to certain claims and to decline intervention as to certain other claims in this action, as follows:

1. The United States intervenes as to all claims against defendant Dey, Inc. to the extent described in the accompanying Complaint filed by the United States.
2. The United States declines to intervene as to the claims against EM Pharma, Inc.; EMD Pharmaceuticals, Inc.; Lipha, S.A.; Merck-Lipha, S.A.; and Merck KGaA.
3. Although the United States declines to intervene with respect to claims against the defendants identified in paragraph (2) above, the Court is respectfully referred to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the United States; providing, however, that the "action may be dismissed only if the court

and the Attorney General give written consent to the dismissal and their reasons for consenting.” Id.

4. Therefore, the United States requests that, should either the relator or the defendants propose that any of the claims identified in paragraph (2) above be dismissed, settled, or otherwise discontinued, this Court solicit the written consent of the United States before ruling or granting its approval.

5. Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings filed in this action, including the non-intervened part of this action against defendants, be served upon the United States; the United States also requests that all orders issued by the Court be sent to the Government's counsel. The United States reserves its right to order any deposition transcripts and to intervene with respect to declined claims in this action, for good cause, at a later date.

6. Finally, the United States requests that the Court unseal (a) a redacted copy of the relator's Third Amended Complaint in Civil Action No. 00-10698, showing claims against defendants (a redacted copy is already on file with the Court), and (b) a copy of the relator's filed complaint in the instant action (which was redacted upon being severed and transferred to this District). The United States requests that all other papers on file in this action remain under seal because in discussing the content and extent of the United States' investigation, such papers are provided by law to the Court alone for the sole purpose of evaluating whether the seal and time for making an election to intervene should be extended.

A proposed order accompanies this notice.

Respectfully submitted,

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By:



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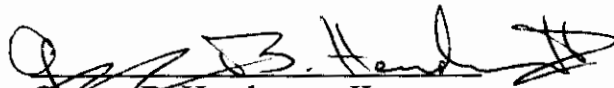
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document and proposed Order were served, via first class mail, on this 22d day of August, 2006, upon the Relator's counsel:

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